

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

NOV 22 1995

In the Matter of)
)
Local Exchange Carriers' Rates,)
Terms, and Conditions for)
Expanded Interconnection Through)
Virtual Collocation for)
Special Access and Switched Transport)

CC Docket No. 94-97
Phase II

DOCKET FILE COPY ORIGINAL

REPLY

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SUMMARY

Commenters on the LEC direct cases offer what is essentially a restatement of positions advanced in earlier stages of this investigation. Fundamental to their claims is a continuing insistence on the functional equivalency of VEIS and competitive DS1/DS3. This supposed comparability is offered as the justification for requiring absolute uniformity between VEIS arrangements and the most favored DS1 and DS3 offerings. In addition opposing parties raise issues respecting the sufficiency of cost support data provided by BellSouth and other LECs and question the use of cost recovery methods for VEIS which are at variance with the methodology applied to DS1/DS3 costs.

None of these criticisms has merit. It is apparent from the most cursory examination that VEIS and DS1/DS3 services do not meet the test of functional equivalency as that standard has evolved through judicial opinion and Commission order. The lack of such equivalence discredits arguments that absolute conformity between VEIS and DS1/DS3 is compelled under the statute or necessary to promote viable competition to LEC services. Moreover, absent any evidence that VEIS rates comprise a significant percentage of total CAP

operating costs, there is no basis for concluding that CAPs are in any respect vulnerable to a “price squeeze” through manipulation of such rates.

BellSouth has filed detailed cost support for VEIS rate elements.

Opposing parties can demonstrate no deficiencies in this data. Instead they rely upon comparisons with other LECs' submissions as a basis for imputing unreliability to BellSouth's support. This approach is inherently flawed, given LEC differences in labor rates, network configurations, traffic densities and other circumstances which may affect cost levels. The application of different cost recovery methods to VEIS and DS1/DS3 also provides no basis for attacking the reasonableness of BellSouth's methodology. As shown in the reply, direct costing represents the most viable approach for developing VEIS rates and insures that each CAP pays for those services (and only those services) it actually consumes.

As a final matter, BellSouth provides with this reply further detail respecting its policies for technician training and its position on the proposed tariffing of installation and repair service intervals.

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REPLY

BellSouth Telecommunications, Inc. ("BellSouth") herewith replies to oppositions/comments addressing its direct case in the above-referenced proceeding.¹ These comments are essentially a restatement of positions advanced by the filing parties in earlier stages of the virtual expanded interconnection service (VEIS) investigation and as such, have already received a full response from BellSouth. Nevertheless, BellSouth remains deeply concerned by the Commission's apparent belief that just and reasonable VEIS tariffs can be achieved only through imposing an artificial conformity on the rates and service terms of VEIS and LEC high capacity offerings. It is, of course, in the interest of opposing parties to encourage this view, their ultimate aim being

¹ Comments on LEC direct cases were filed by the following parties: Association for Local Telecommunications Services (ALTS); Electric Lightwave, Inc. (ELI) (US West only); GST Pacwest Telecom Hawaii, Inc. (Pacwest) (GTE only); ICG Access Services, Inc. (ICG); Kansas City Fibernet, L.P. (Fibernet) (SWBT only); MCI Telecommunications Corporation (MCI); MFS Communications Company, Inc. (MFS); Teleport Communications Group Inc. (TCG); and Time Warner Communications Holdings, Inc. (TWComm).

the adoption of regulations which will deprive BellSouth of the right to make ordinary business decisions respecting service pricing and cost recovery. To the extent this strategy is successful, they will be protected from the rigors of competition, and the Commission goal of a thriving and open market in access service provisioning will be correspondingly deferred or defeated.

In consideration of these circumstances, BellSouth has endeavored to respond to each issue raised in the opposing comments which might be pertinent to its direct case, notwithstanding that some repetition of matters addressed in earlier phases of this investigation will inevitably result.

DISCUSSION

1. COMPARABILITY OF SERVICES

Fundamental to the claims of direct case opponents is their continuing insistence on the functional equivalency of VEIS and competitive DS1/DS3 services.² This supposed comparability is offered as the justification for requiring absolute uniformity between VEIS arrangements and the most favored DS1 and DS3 offerings.³ Thus, absent extraordinary justification, overhead loadings must

² "As MFS has conclusively demonstrated in the past, the provision of virtual interconnection services is the functional equivalent of the dedicated, high capacity special and switched access services, such as DS1 and DS3." MFS, pp. 5-6.

³ Since variations in overhead loadings and other terms and conditions exist among respective DS1 and DS3 services, it becomes necessary to pick and choose those to be applied to VEIS. Not surprisingly, direct case opponents insist that the most favorable provisions available under any LEC offering should without exception be extended to VEIS arrangements.

be identical between the services, unit costs must be identical and identical methods must be employed to recover these identical costs. According to the proponents of this view, any standard less rigorous creates the danger of a “price squeeze” through which LECs will thwart competitive entry by charging excessive prices for facilities and services needed by would-be rivals.

It is apparent from the most cursory examination that VEIS and DS1/DS3 services do not meet the test of functional equivalency as that standard has evolved through judicial opinion and Commission order. Such precedent teaches that in any case where functional equivalency is alleged, the central inquiry is “whether the services are ‘different in any material functional respect.’... The test looks to the nature of the services offered to determine likeness; the perspective of the customer faced with differing services is often considered a significant factor.”⁴ As applied by the Commission, the functional equivalency standard entails a review of “the entire package of benefits, rights, restrictions, duties, facilities and services contracted for between the customer and the communications carrier and is not restricted to the physical facilities that are used in long distance calls.”⁵

⁴ American Broadcasting Companies, Inc. v. F.C.C., 663 F.2d 133, 138-139 (D.C. Cir. 1980).

⁵ Ad Hoc Telecommunications Users Comm. v. F.C.C., 680 F.2d 790, 803-804 (D.C. Cir. 1982) (MacKinnon, J., concurring).

In a VEIS arrangement, BellSouth provides a cross-connect panel, riser and floor space and environmental support (power, HVAC, etc.). Additionally, BellSouth provides maintenance and repair services to interconnector-designated equipment (IDE) at the specific direction of the competitive access provider (CAP). These services constitute the limit of BellSouth's undertaking with respect to VEIS. By contrast, provisioning of DS1/DS3 services involves a commitment to provide an end-to-end communications path for voice and data transmission. In meeting this service obligation, BellSouth must provide all switching and transmission equipment, all facilities to house and protect such equipment, and all necessary environmental and administrative support. Finally, BellSouth monitors DS1/DS3 circuits to insure compliance with designated performance criteria and initiates corrective action when these criteria are not met.

Apart from these differences, the element of customer perception alone is sufficient to negate any finding of functional equivalence between VEIS and DS1/DS3 services. Admittedly in every case, a VEIS customer will use the facilities and services provided through these arrangements in combination with its own facilities or those of another provider to create an alternative to DS1/DS3. Conversely, a customer desiring a circuit for which the LEC bears sole provisioning and maintenance responsibility will never avail itself of the VEIS offering.

This lack of functional equivalence discredits arguments that absolute conformity between VEIS and DS1/DS3 is compelled under the statute or necessary to promote viable competition to LEC services.⁶ Furthermore, absent any evidence that VEIS rates comprise a significant percentage of total competitive access provider (CAP) operating costs, there is no basis for concluding that CAPs are in any respect vulnerable to a "price squeeze" through manipulation of such rates.⁷

2. SUFFICIENCY OF COST SUPPORT

A few commenters continue to assert that BellSouth has provided inadequate support to substantiate the costs claimed for VEIS arrangements. ALTS argues for the disallowance of any amount exceeding the lowest corresponding cost filed by a Tier 1 LEC and urges the Commission to apply a

⁶ See also AT&T Communications Revisions to Tariff F.C.C. No. 12, CC Docket No. 87-568, FCC 89-116, Memorandum Opinion and Order, released April 18, 1989 ("Custom Network Order") (Commission found material functional differences between integrated service packages comprising AT&T custom network offerings and individual services. From customer perspective, two material differences were identified. First, integrated service packages offered "turnkey" approach to service procurement by unifying all relevant technology requirements and applicable terms and conditions in a single tariff. Second, substantial differences existed in mutual commitments of customers and carrier relative to these offerings.). Many of the same criteria can be cited to distinguish VEIS--a disaggregated piece of LEC end-to-end service--from DS1 and DS3.

⁷ See Reply to oppositions to BellSouth's direct case, April 11, 1995, where it was shown that the DS1 cross-connect rate element, if applied to BellSouth services, would constitute no more than 6% of DS1 local channel rates.

Modification of Final Judgment (MFJ)-derived standard of review in its evaluation of LEC cost data.⁸ MCI complains that BellSouth and other LECs are effecting double recovery of land and building costs through direct assignment to VEIS rates while including the same costs in general overhead loadings.⁹ TWComm questions the sufficiency of supporting data for BellSouth's per-cable installation fee and VEIS application fee, which are assertedly higher than corresponding charges of other LECs.¹⁰

BellSouth filed detailed cost support for VEIS rate elements in Transmittal No. 223, Volumes 1-1 and 1-2, on September 1, 1994. This filing provides a description of each recurring rate element, which identifies the type(s) and level of investment and associated annual costs. For each nonrecurring rate element, BellSouth provides relevant work activities, work centers, work times and labor rates.¹¹

Significantly, opposing parties point to no deficiencies in the data submitted. Instead, they cite differences in the cost calculations of other LECs as a basis for impeaching the credibility of BellSouth's filing. There are numerous pitfalls in such an approach. First, notwithstanding opposing parties'

⁸ ALTS, p. 6.

⁹ MCI, pp. 13-16.

¹⁰ TWComm, p. 29 at n. 40; pp. 31-32.

¹¹ Supporting documentation for the cable installation fee and VEIS application fee challenged by TWComm is contained in Attachment A, workpapers 3 and 3A of this transmittal.

claims, there is no reason to assume that one methodology is more accurate than another simply because it produces a lower cost. Second, all LECs do not incur the same level of costs for a work activity. Differences in labor rate, network configuration and traffic density--alone or in combination--may produce variations in cost. Third, with the exception of the cross-connect, the Commission has not prescribed a specific rate structure for VEIS. Therefore, an exact correspondence in work activities/functionalities incorporated in BellSouth rate elements and those of other LECs is unlikely. For all the foregoing reasons, BellSouth's filing (and every other LEC filing) must be evaluated on the basis of individual merit and not by simplistic comparisons.¹²

In response to MCI's charge of double recovery, BellSouth has already shown that land and building cost directly assigned to VEIS rates is incurred for the land and central office floor space housing the collocated arrangement. By contrast, the land and building component of general overhead costs recovers an allocated portion of land and buildings dedicated to administrative support

¹² Moreover, some parties have apparently misinterpreted data provided in compliance with Common Carrier Bureau requirements. See MCI pp. 10-11 and n. 17, which purport to offer a comparative analysis of DS1 price outs. The figure of \$106.17 per DS1 attributed to BellSouth was calculated by summing recurring charges and amortized nonrecurring charges and dividing the total by a demand of 100 (as directed by the Bureau). In fact, recurring and nonrecurring charge data was developed on BellSouth's actual demand of 182. Substituting actual demand in this calculation produces revised recurring charges of \$10.34; revised nonrecurring charges of \$47.99 and a revised DS1 price out total of \$58.33. Moreover, a CAP adding DS1 facilities in these circumstances will incur no additional cable installation and application fees, further reducing the nonrecurring charges applicable per DS1 and the DS1 price out total.

(e.g., the BellSouth headquarters building in Atlanta). A similar methodology is applied to competitive DS1/DS3 services. Hence, there is no over-recovery of this cost element through VEIS rates.

Finally, the Commission is not the appropriate forum to adjudicate MFJ issues related to expanded interconnection tariff transmittals. As has been recognized in other contexts, the Commission's statutory mandate does not convey responsibility for MFJ compliance, and any questions regarding RBOC obligations under the MFJ must be addressed to the court charged with decree enforcement.¹³

3. COST RECOVERY ISSUES

Even when unable to find fault with the costing methodologies applied to VEIS and DS1/DS3 services, certain commenters nevertheless insist that the application of different cost recovery methods is inherently unfair to expanded interconnection arrangements.¹⁴ The principle corollary to this argument is that CAPs are disadvantaged through the use of direct service costing. It is thus contended that to insure equitable treatment, VEIS costs should be recovered through the application of support investment loading factors to equipment

¹³ "Compliance with MFJ criteria is not one of the standards that we shall require an access charge tariff to satisfy. Compliance or noncompliance is an issue to be resolved by the Court." American Telephone and Telegraph Company, 94 F.C.C.2d 545, 550 n. 9 (1983). See also Southwestern Bell Telephone Company, Transmittal No. 1858, 5 FCC Rcd 19 (1989).

¹⁴ ALTS, pp. 21-22.

investment, in the same manner that BellSouth currently recovers the costs of DS1/DS3 service provisioning.

BellSouth offers VEIS using equipment leased from the interconnector for a nominal sum. Although CAPs universally approve this type of arrangement,¹⁵ one consequence of its use is that BellSouth has no investment in VEIS equipment to which cost factors could be applied. Moreover, since CAP investment levels will vary, application of a single factor to all CAP investment (assuming this amount could be ascertained) would require some CAPs to subsidize the operations of their competitors.

If commenters are suggesting that BellSouth apply to VEIS those support investment loading factors developed for DS1/DS3, other problems arise. Each factor is a ratio developed from actual investment in DS1/DS3 circuit equipment and tracked investment for power, land and buildings, etc. Due to the magnitude of circuit investment, support investment loading factors produce a relatively small incremental loading on each affected service; nevertheless, when the cost associated with these investments is recovered from all services, BellSouth is assured of recouping its full annualized costs. This would not be true if BellSouth-derived support loading investment factors were applied to CAP investment-- a procedure which would yield charges for power, maintenance, etc. far less than the costs actually incurred by BellSouth in furnishing these services to VEIS arrangements. A direct costing methodology thus represents

¹⁵ TWComm, pp. 4-5; MFS, p. 12 at n.16.

the most viable approach for developing VEIS rates and insures that each CAP pays for those services (and only those services) it actually consumes.

Other parties insist that LECs must employ the same method for recovery of VEIS nonrecurring costs that is used for corresponding costs of DS1/DS3 service provisioning.¹⁶ BellSouth objects to the mandate of a particular cost recovery method, which would wrongly impede its ability to develop a unified competitive strategy.¹⁷ Nevertheless, if the Commission adopts this view, it must similarly constrain BellSouth's competitors, who presently enjoy unfettered discretion in the offer of customer incentives, including discounts, NRC waivers and special payment arrangements.¹⁸

4. COST OF MONEY

MCI repeats its charge that BellSouth employed a cost of money factor higher than authorized by the Commission.¹⁹ Contrary to MCI's claim, the Common Carrier Bureau did not prescribe a cost of money factor of 11.25 percent. Instead, BellSouth and other LECs were directed to target rates to

¹⁶ MFS, p. 11.

¹⁷ Likewise, BellSouth and other LECs should be free to employ volume and term discount plans of their own design, subject only to the limitation that such plans recover service costs plus a reasonable portion of overhead.

¹⁸ BellSouth would be willing to consider amortizing certain nonrecurring charges applicable to VEIS; however, further study is necessary to identify an appropriate payment interval and otherwise develop this option.

¹⁹ MCI, pp. 12-13 and n.18.

achieve a realized return of no more than 11.25 percent on the provision of VEIS. Because rate of return is not synonymous with cost of money, BellSouth properly used a factor of 13.34 percent in complying with the Bureau's order.²⁰

5. TRAINING ISSUES

A minimum of four trained technicians is necessary to insure maintenance and repair coverage of collocated equipment 24 hours per day, 7 days per week. This policy does not impose undue burdens on collocators and is to some degree necessitated by terms of the collective bargaining agreement, which require an even distribution of call outs and overtime. With respect to its own equipment, BellSouth engages in continuous training, the goal being to make all technicians conversant with all equipment in the central office. BellSouth will authorize turn-up of a collocation arrangement before training of the full complement of technicians has been completed. Through prior agreement, BellSouth and the CAP can determine minimum training requirements to be achieved before turn-up, which requirements will vary depending on workforce size and other work in progress at the central office.

²⁰ See Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, CC Docket No. 94-97, Phase I, BellSouth Reply, April 11, 1995, p. 5. BellSouth uses incremental costs in ratemaking. The cost of money factor reflects a forward looking cost which is consistent with incremental methodology. The same factor is applied to VEIS and to BellSouth DS1/DS3 services. To the extent absolute uniformity between these offerings remains an objective, BellSouth's application of the cost of money factor is entirely consistent with such a policy.

BellSouth will work cooperatively with CAPs to maximize use of free training from the equipment vendor. In such circumstances, the collocator remains responsible for payment of travel time and meal/lodging expenses incurred by technicians. BellSouth likewise favors and has participated in "on-site" training classes where these can be arranged without cost to BellSouth or disruption of normal business activity. "Hands on" training is not permitted within the central office, since this is considered to pose an unacceptable risk to working equipment; however, alternative facilities (e.g., mobile training labs) which can be brought to the worksite are entirely acceptable. Although BellSouth must ultimately decide what training is needed to provide the services required under its tariff, the Company remains receptive to collocator input respecting the appropriate level and scope of training and the choice of curriculum. Travel and lodging arrangements are governed by the collective bargaining agreement and thus cannot be delegated to the collocator. In making these arrangements, BellSouth's goal is to obtain reasonable accommodations at the lowest available cost.

6. INSTALLATION AND REPAIR INTERVALS

BellSouth cannot tariff installation intervals, which are generally established through direct negotiation between CAPs and certified vendors. Cross-connect elements, being a part of BellSouth's DS1/DS3 service, are subject to the same due date provisions as the associated high capacity offering.

Repair service intervals are likewise determined in part by the collocator, who must identify a trouble, initiate a call to the repair center and direct the dispatch of a BellSouth technician. Upon receiving this communication, BellSouth opens a trouble ticket using the same procedures, systems and tracking mechanisms applicable to customer-reported troubles affecting its own service. A dispatch to collocator equipment thus assumes the same priority as any other service outage report.


Given the circumstances described, BellSouth questions the need for specific repair service intervals applicable to VEIS arrangements. Nevertheless, BellSouth is willing to consider developing such provisions, once it has gained sufficient experience in the repair of interconnector equipment to permit the establishment of reasonable averaged intervals.

CONCLUSION

BellSouth has amply justified the terms and conditions of its VEIS offering. The criticisms of opposing parties are insubstantial and motivated primarily by a desire to secure unwarranted advantage in the competitive marketplace. Accordingly, the Commission should promptly conclude this investigation and enter its order dissolving the partial suspension of rates filed under Transmittal No. 223.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of November, 1995 served all parties to this action with a copy of the foregoing REPLY by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed on the attached service list.



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